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This is a full and timely response to the Office Action mailed December 1, 2006 (the "Office Action"). In the Office Action, the Examiner withdrew the rejections of the claims under 35 U.S.C. § 112, second paragraph. However, the Office Action sets forth new grounds of rejection for claims 1, 3-15, 17-30, and 32-61. Reconsideration of this application in light of the foregoing amendments and the following remarks is respectfully requested. Additionally, as a preliminary matter, Applicant again requests that the attorney docket number be changed to 66509-0008 in the records of the Office.

Claims Status:

In this Amendment, claims 1, 13, 15, 27, 29, 33, and 54-59 have been amended, and new dependent claims 62-69 have been added. No new matter has been introduced.

No claims have been canceled. Claims 2, 16, and 31 were previously canceled without prejudice or disclaimer. Consequently, claims 1, 3-15, 17-30 and 32-69 are currently pending for further action.

**I. Claim Rejections – 35 U.S.C. § 102**

Claims 1, 3, 4, 13-15, 17, 18, 27, 28, 33-39, 44-49, 54, 55, 57, 58, 60, and 61 were rejected under 35 U.S.C. § 102 (hereinafter "§ 102"). Applicant respectfully traverses the § 102 rejections for at least the following reasons.

**A. Independent Claims 1, 15, 33, and 54**

Independent claims 1, 15, 33, and 54 were rejected as being anticipated under § 102 by

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International Publication No. WO 00/34899 (hereinafter "Handler"). Claims 1 and 15 have been amended herein and now recite:

1. An online auction system for enabling bidding over a computer network by remotely located bidders utilizing computing devices for receiving information to be provided to a bidder and transmitting bid information of the bidder, comprising:

one or more servers configured to provide an auction service having 1) a preliminary bidding component conducted over the computer network, the preliminary bidding component offering for auction a plurality of items, each item being offered for a pre-established duration of time, the preliminary bidding component resulting in a final preliminary bid for each of the plurality of items; and 2) a dynamic real-time auction component conducted over the computer network, beginning after closing of the preliminary bidding component upon expiration of the pre-established duration of time, the dynamic auction component offering for auction each of the plurality of items from the preliminary auction component, the dynamic auction component defining a starting bid for each of the plurality of items in the dynamic auction component based on the respective final preliminary bid from the preliminary bidding component, the dynamic auction component being configured to receive dynamic bids over the computer network and to apply the dynamic bids in real time.

15. A method of conducting an auction over a computer network comprising:

offering over the network a preliminary bidding on a plurality of items offered for auction, each item being offered for a pre-established time period;

accepting preliminary bids resulting in a final preliminary bid for each of the plurality of items;

closing the preliminary bidding upon expiration of said pre-established time period;

offering over the network dynamic real-time bidding for each of the plurality of items from the preliminary bidding after said closing of the preliminary bidding;

defining a starting bid for each of the plurality of items in the dynamic real-time bidding based on the respective final preliminary bid from the preliminary bidding;

receiving at least one dynamic bid over the computer network during the dynamic real-time bidding; and

applying the at least one dynamic bid in real time.

Emphasis added. Similar to claim 1, claims 33 and 54 have been amended herein and recite

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elements directed to “the dynamic auction component being configured to receive dynamic bids over the computer network and to apply the dynamic bids in real time.”

Handler does not disclose “the dynamic auction component being configured to receive dynamic bids over the computer network and to apply the dynamic bids in real time” as recited in claims 1, 33, and 54 or “receiving at least one dynamic bid over the computer network during the dynamic real-time bidding; and applying the at least one dynamic bid in real time” as recited in claim 15. Handler discloses:

In a first stage of the integrated auction, e.g., the “pre-auction bidding stage,” a starting bid for a traditional, live auction may be established based upon bids received from online bidders. Subsequently, in a second stage of the integrated auction, e.g., the “live auction stage,” a live auction is conducted by an auction house, such as Guernsey’s, using the highest bid from the pre-auction bidding stage.

Handler, page 3, lines 1-5. In the Office Action, the Examiner alleges that the pre-auction bidding stage and the live auction stage of Handler disclose the “preliminary bidding component” and the “dynamic real-time auction component,” respectively, as recited in the claims. Office Action, pages 3 and 4. However, critical to the live auction stage of Handler is a live, in-person auction such as would be conducted by an auction house (e.g., Guernsey’s). Such an in-person auction in which bidders must be physically present to bid is entirely different from the “dynamic auction component conducted over the computer network” as recited in claim 1, 33, and 54 or the “offering over the network dynamic real-time bidding for each of the plurality of items from the preliminary bidding after said closing of the preliminary bidding” as recited in claim 15. Emphasis added. Accordingly, the live in-person auction of Handler cannot reasonably be relied upon to reject the “dynamic action component” recited in claims 1, 33, and 54 or the “dynamic

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real-time bidding” recited in claim 15.

Moreover, the capabilities of online bidders are limited during the live auction stage of Handler. In particular, Handler discloses:

During the live, in-person auction, a bid may be accepted from an online bidder in the online environment that reflects a maximum price the online bidder is willing to pay for the item. Subsequently, the system bids on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction based upon the maximum price (640).

Handler, Abstract, emphasis added. Thus, although Handler discloses accepting a bid from an online bidder during the live auction stage, the online bid is limited to a proxy bid that can be applied only subsequently on behalf of the online bidder. Handler further discloses:

During the live auction stage, bidding information is updated on the online auction site and online bidders may submit additional maximum proxy amounts. Finally, in an optional third stage of the integrated auction, e.g., the “proxy showdown stage,” if an online bidder’s maximum proxy price is greater than the highest bid from the live auction stage, then the integrated auction returns to the live auction until the proxy price has been met.

Handler, page 3, lines 5-10, emphasis added. Clearly, the live auction stage of Handler is limited to receiving only online proxy bids during the live auction stage and subsequently conducting a showdown between an online proxy bidder and live in-person bidders. Not only are the online proxy bids different from the “dynamic bids” recited in the claims, the subsequent use of the proxy bids in a separate auction stage is in direct contrast to applying dynamic bids in real time, as recited in the claims. For at least these reasons, Handler clearly does not disclose “the dynamic auction component being configured to receive dynamic bids over the computer network and to apply the dynamic bids in real time” as recited in claims 1, 33, and 54 or of “receiving at least one dynamic bid over the computer network during the dynamic real-time

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bidding; and applying the at least one dynamic bid in real time" as recited in claim 15.

"A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. For the foregoing reasons, Handler fails to teach every element set forth in independent claims 1, 15, 33, and 54. Therefore, the § 102 rejection of these claims based on Handler should now be reconsidered and withdrawn.

#### **B. Dependent Claims**

Dependent claims 3, 4, 13, 14, 17, 18, 27, 28, 34-39, 44-49, 55, 57, 58, 60, and 61 were also rejected under § 102 as being anticipated by Handler. For at least the same reasons described above, the § 102 rejections of claims 3, 4, 13, 14, 17, 18, 27, 28, 34-39, 44-49, 55, 57, 58, and 60 should be reconsidered and withdrawn because of these claims' respective dependencies from independent claim 1 or 15.

It appears from the context of the Office Action that claim 61 was improperly rejected under § 102 as being anticipated by Handler. Claim 61 depends from independent claim 29, which was rejected under 35 U.S.C. § 103(a) as being unpatentable over Handler and further in view of U.S. Patent Application Publication No. 2002/0016743 ("Dorr"). Therefore, the § 102 rejection of claim 61 should be reconsidered and withdrawn.

The dependent claims also recite elements not disclosed in Handler. Merely by way of example, claims 55, 57, and 58 recite elements not disclosed in Handler, as described below.

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# 1. Claims 55 and 58

Claims 55 and 58 has been amended and now recite:

55. The system of claim 1 wherein the final preliminary bid for a particular one of the plurality of items is determined to be a winning bid for the particular item unless a dynamic bid higher than the final preliminary bid is received over the computer network during the dynamic real-time auction component.

58. The method of claim 15 further comprising determining the final preliminary bid for a particular one of the plurality of items to be a winning bid for the particular item unless a dynamic bid higher than the final preliminary bid is received over the computer network during the dynamic real-time bidding.

Emphasis added.

In reference to claims 55 and 58, the Examiner states, "Handler discloses this feature inherently because, if during the second stage (live auction stage) no higher bid than the starting bid established during the preliminary bidding stage is received the starting bid would be the highest bid and therefore a winning bid." Office Action, page 5. However, it is not necessarily the case in Handler that the starting bid established during the preliminary bidding stage would be the winning bid if no higher bid than the starting bid is received over a computer network during the live auction stage of Handler. For example, if the only higher bid than the starting bid received during the live auction portion of Handler is an in-person bid received by an auction house conducting a live, in-person auction during the live auction stage, then, according to Handler, the higher in-person bid rather than the starting bid would be the winning bid even though there was no higher bid than the starting bid received over a computer network during the live auction stage. Therefore, Handler does not expressly disclose each and every element recited in claims 55 and 58.

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Moreover, the elements of claims 55 and 58 are not inherently disclosed by Handler.

"Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (citations omitted). "[T]he examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (BPAI 1990). Therefore, for at least the reasons described above, the elements of claims 55 and 58 are not inherently disclosed in Handler, and the § 102 rejection of claims 55 and 58 should be reconsidered and withdrawn.

## 2. Claim 57

Claim 57 has been amended and now recites:

57. The system of claim 1 wherein the dynamic auction component is configured to accept over the computer network, for each of the plurality of items, a dynamic bid greater than the final preliminary bid received for the respective item during the preliminary bidding component.

Emphasis added. For at least the same reasons described above in relation to independent claims 1, 15, 33, and 54, Handler does not disclose "wherein the dynamic auction component is configured to accept over the computer network, for each of the plurality of items, a dynamic bid...." Emphasis added. In contrast, Handler is limited to accepting only proxy bids from an online environment during a live auction stage. Therefore, Handler does not disclose each and every element recited in claim 57, and the rejection of the claim should be reconsidered and withdrawn.

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## II. Claim Rejections – 35 U.S.C. § 103

Claims 5, 6, 7-12, 19-26, 29, 30, 32, 40-43, 50-53, 56, and 59 were rejected under 35 U.S.C. §103 (hereinafter “§ 103”). Specifically, claims 5, 6, 19, 20, 29, and 32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Handler and further in view of Dorr, claims 7-12, 21-26, 30, 40, 50, 56, and 59 were rejected under 35 U.S.C. §103(a) as being unpatentable over Handler and further in view of Official Notice, claims 41 and 51 were rejected under 35 U.S.C. §103(a) as being unpatentable over Handler and further in view of U.S. Patent Application Publication No. 2006/0224497 (“Walker”), and claims 42, 43, 52, and 53 were rejected under 35 U.S.C. §103(a) as being unpatentable over Handler and further in view of Canada Patent No. CA 2329281 (“Peterson”). Applicant respectfully traverses the § 103 rejections for at least the following reasons.

### A. Independent Claim 29

Independent claim 29 was rejected under 35 U.S.C. §103(a) as being unpatentable over Handler and further in view of Dorr. Claim 29 has been amended herein and now recites:

29. A method for conducting an auction over a computer network comprising:  
conducting a first auction portion  
    offering a plurality of items for auction, each item being offered for a pre-established duration,  
    a first auction portion communication over the network causing a display of a first auction portion status, including a final first auction portion high bid for each of the plurality of items;  
closing the first auction portion upon expiration of the pre-established duration; and  
conducting a second real-time virtual auction portion over the computer network after said closing of the first auction portion, the second real-time virtual auction portion  
    offering for auction over the computer network the plurality of items from the first auction portion, and



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defining a starting bid for each of the plurality of items in the second auction portion based on the respective final first auction portion high bid from the first auction portion,

receiving at least one dynamic bid over the computer network, and  
applying the at least one dynamic bid in real time.

a second auction portion communication over the network causing a display of a second auction portion status, including, for a particular one of the plurality of items, a current high bid and a second auction portion countdown timer showing a running time until the current high bid will be deemed a winning bid unless a more favorable bid is received.

Emphasis added.

For the same reasons described above in relation to claim 15, Handler does not disclose each and every claim element recited in claim 29, including "receiving at least one dynamic bid over the computer network, and applying the at least one dynamic bid in real time." Dorr was cited only for an alleged disclosure of a countdown timer and as such does not cure the above-described deficiency of Handler. Therefore, the asserted combination of Handler and Dorr does not teach or suggest each and every element recited in claim 29. "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). Accordingly, the § 103 rejection of claim 29 should be reconsidered and withdrawn.

#### **B. Dependent Claims 5, 6, 19, 20, and 32**

Dependent claims 5, 6, 19, 20, and 32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Handler and further in view of Dorr. For at least the same reasons described above, Dorr does not cure the above-described deficiencies of Handler. Therefore, the § 103

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rejection of claims 5, 6, 19, 20, and 32 should be reconsidered and withdrawn at least because of these claims' respective dependencies from independent claim 1, 15, or 29.

**C. Dependent Claims 7-12, 21-26, 30, 40, 50, 56, and 59**

Dependent claims 7-12, 21-26, 30, 40, 50, 56, and 59 were rejected under 35 U.S.C. §103(a) as being unpatentable over Handler and further in view Official Notice. The assertions of Official Notice as set forth in the Office Action do not cure, nor does the Examiner allege that they cure, the deficiencies of Handler described above in relation to the independent claims. Therefore, the § 103 rejection of claims 7-12, 21-26, 30, 40, 50, 56, and 59 should be reconsidered and withdrawn at least because of these claims' respective dependencies from independent claim 1, 15, or 29.

The dependent claims also recite elements not taught or suggested in the asserted combination of Handler and Official Notice. Merely by way of example, for at least the reasons described below, claims 40, 50, 56, and 59 recite elements not disclosed in the combination of Handler and the assertions of Official Notice.

**1. Claims 40 and 50**

Claims 40 and 50 recite:

40. The system of claim 1 wherein the preliminary bidding component offers the plurality of items for bid simultaneously, and the dynamic real-time auction component offers the plurality of items for bid individually and consecutively.

50. The method of claim 15 wherein said step of offering the preliminary bidding includes offering the plurality of items for bid simultaneously, and said step of offering the dynamic real-time bidding includes offering the plurality of items for bid individually and consecutively.

Emphasis added.

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According to the Office Action:

Handler fails to teach offering the plurality of items for bid simultaneously, and the dynamic real-time auction component offering the items individually. However, offering a plurality of items simultaneously and offering items individually for sale over a computer network is old and well known and the examiner takes official notice of this feature.

Office Action, page 6. However, this assertion does not consider each and every element recited in claims 40 and 50 and improperly fails to consider claims 40 and 50 in the context of their respective base claims. For example, the asserted taking of Official Notice ignores the claim element of "consecutively" as recited in the claims. Moreover, the assertion of Official Notice does not consider the combination of the preliminary bidding component offering items for bid simultaneously and the dynamic real-time auction component offering items for bid individually and consecutively. For at least these reasons, Applicant respectfully traverses the taking of Official Notice because the assertions of Official Notice are not capable of instant and unquestionable demonstration as being "well-known" in the art. Applicant requests pursuant to MPEP §2144.03 that if the Examiner continues to rely upon Official Notice that the Examiner cite a reference in support of his position.

## 2. Claims 56 and 59

Claims 56 and 59 have been amended and now recite:

56. The system of claim 1 wherein the dynamic auction component is configured to accept dynamic bids over the computer network for a particular one of the plurality of items until a dynamic bid higher than a current high bid for the particular item is not received within a predefined period of time.

59. The method of claim 15 further comprising accepting dynamic bids over the computer network for a particular one of the plurality of items until a

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dynamic bid higher than a current high bid for the particular item is not received within a predefined period of time.

Emphasis added.

According to the Office Action:

Claims 56 and 59: recites [sic] computerized feature equivalent to “going once, going twice, gone” which is customary in the traditional auctions. It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention to modify Handler to configure the dynamic auction in Handler accordingly in order to alert the bidders of the impending closing of the auction.

Office Action, page 6. Applicant respectfully disagrees. Firstly, Applicant disagrees with the “going once, going twice, gone” characterization of claims 56 and 59 set for in the Office Action and respectfully requests consideration of the express language of the claims rather than a succinct characterization thereof. Secondly, it would not be a trivial matter to modify Handler as asserted in the Office Action. For example, a “going once, going twice, gone” element of a traditional live, in-person auction would not be a trivial or obvious modification to an online environment as suggested in the Office Action, especially in Handler where the live auction portion relies on a live, in-person auction integrated with a limited online environment.

For at least these reasons, Applicant respectfully traverses the taking of Official Notice because it is not capable of instant and unquestionable demonstration as being “well-known” in the art and requests pursuant to MPEP §2144.03 that if the Examiner continues to rely upon Official Notice that the Examiner cite a reference in support of his position.

**D. Dependent Claims 41 and 51**

Dependent claims 41 and 51 were rejected under 35 U.S.C. §103(a) as being unpatentable over Handler and further in view of Walker. Claims 41 and 51 recite:

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41. The system of claim 1 wherein the dynamic real-time component is configured to decrease an amount of time allotted between dynamic bids as the total number of dynamic bids received increases.

51. The method of claim 15 further comprising decreasing an amount of time allotted between dynamic bids as the total number of dynamic bids received increases.

According to the Office Action, "Handler fails to teach, however, Walker...teaches behavior of the bidders (bid increment) as a function of the time allotted between dynamic bids (see Summary)." Office Action, page 7. However, the cited section of Walker does not teach or suggest "wherein the dynamic real-time component is configured to decrease an amount of time allotted between dynamic bids as the total number of dynamic bids received increases" as recited in claim 41 or "decreasing an amount of time allotted between dynamic bids as the total number of dynamic bids received increases" as recited in claim 51. For example, the cited section of Walker does not teach or suggest basing the amount of time allotted between dynamic bids on the total number of dynamic bids receives.

In contrast, the only specific grounds disclosed in the cited section of Walker on which a determination of bid timing is based include the average period of time between bids and the average increment between bids, which are certainly different from "the total number of dynamic bids" recited in claims 41 and 51. The cited section of Walker does not include any teaching or suggestion of "the total number of dynamic bids" as recited in claim 41 and 51, much less "decreasing an amount allotted between dynamic bids as the total number of dynamic bids received increases." Therefore, Handler and Walker fail to teach or suggest each and every element of claim 41 and 51, and the Office Action fails to establish a *prima facie* case of

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obviousness against these claims. Accordingly, the §103 rejection of claims 41 and 51 should be reconsidered and withdrawn.

**E. Dependent Claims 42, 43, 52, and 53**

Dependent claims 42, 43, 52, and 53 were rejected under 35 U.S.C. §103(a) as being unpatentable over Handler and further in view of Peterson. Peterson was cited solely for an alleged teaching of selectable bid increment buttons and as such does not cure, nor does the Examiner allege that it cures, the deficiencies of Handler described above in relation to claims 1 and 15. Therefore, the § 103 rejection of claims 42, 43, 52, and 53 should be reconsidered and withdrawn at least because of these claims' respective dependencies from independent claim 1 or 15.

**III. New Claims 62-69**

Applicant has added new dependent claims 62-69, each of which depends from independent claim 1 or 15. The newly added claims are thought to be allowable for at least the same reasons that independent claims 1 and 15 are allowable. The new claims also recite independently patentable subject matter. Therefore, examination and allowance of the newly added claims is respectfully requested.

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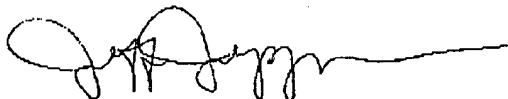
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In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

It is believed that any additional fees due with respect to this paper have already been identified in any transmittal accompanying this paper. However, if any additional fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge account number 18-0013 in the name of Rader, Fishman and Grauer PLLC. If the Examiner has any question or comments, he is kindly urged to call the undersigned to facilitate prosecution.

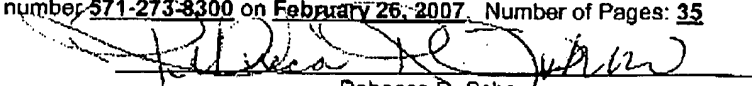
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